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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) Criminal Case No. 07CR3239-JM
13 Plaintiff,)
14 v.) Date: May 30, 2008
Time: 1:30 p.m.
15 LEONARDO SAN JUAN, JR.,) GOVERNMENT'S SUPPLEMENTAL
16) MOTION IN LIMINE TO LIMIT
17 Defendant.) CHARACTER EVIDENCE
18)
19)

20 PLEASE TAKE NOTICE that on May 30, 2008, at 1:30 p.m., or
21 as soon thereafter as counsel may be heard, the Plaintiff, the
22 UNITED STATES OF AMERICA, by and through its counsel, Karen P.
23 Hewitt, United States Attorney, and Nicole Acton Jones and
24 Tara McGrath, Assistant United States Attorneys, will ask the
25 Court to issue an order granting the following Motion in
26 Limine. This motion is based upon the files and records of
27 the case together with the previously submitted Statement of
28 Facts and Memorandum of Points and Authorities.

I.

THE COURT SHOULD LIMIT CHARACTER EVIDENCE

The United States has been provided with a list of 12 possible Defense witnesses in this case. Based on conversations with eight of the 12 individuals provided on the Defense list, the United States anticipates that Defendant may improperly attempt to introduce testimony regarding Defendant's good military character and specific acts of prior good conduct.

In a criminal case, "a defendant may offer evidence of 'a pertinent trait of his character' under Rule 404(a)(1); this evidence may take the form of testimony as to reputation under Rules 405(a) and 803(21) or of opinion testimony under Rule 405(a)." United States v. Barry, 814 F.2d 1400, 1402-3 (9th Cir. 1987). Evidence of specific instances of good conduct is only admissible in cases where the character trait in question an "essential element" of the charge or a defense. Fed. R. Evid. 405(b). Thus, while it is permissible for a criminal defendant to attempt to show a pertinent character trait through reputation or opinion testimony, a character witness may not offer specific instances of good conduct by the defendant. See United States v. Hedgecorth, 873 F.2d 1307, 1313 (9th Cir. 1989).

In interpreting the permissible scope of character evidence under Rule 404(a), the Ninth Circuit has ruled that presentation of witnesses to testify about a defendant's character for lawfulness or "law abidingness" is generally permissible. United States v. Diaz, 961 F.2d 1417, 1419 (9th

1 1992) (holding that general questions about whether a
2 defendant is generally law abiding were proper, but questions
3 on whether he would engage in a particular crime were not).
4 Evidence of other character traits, however, is only
5 admissible if the trait is relevant to the charged crime. In
6 Hedgecorth, for example, the defendant was charged with
7 multiple violations of federal explosives and firearms laws,
8 including a charge under 26 U.S.C. § 5861(d). 873 F.2d at
9 1309. The Ninth Circuit affirmed the district court's ruling
10 that defense evidence regarding the defendant's role as an
11 intelligence operative for the United States was not
12 admissible to show he was "patriotic" or "pro-Government."
13 Id. at 1313. The Court further held that such evidence was
14 not admissible to show the defendant's character lawfulness
15 because it went beyond reputation or opinion testimony. Id.

16 It would appear, based on conversations with Defense
17 witnesses, that the intention of the Defense is to go way
18 beyond that which is allowed. The United States requests that
19 the court rule in favor of this motion to preclude any
20 character testimony beyond Defendant's general character for
21 "law abidingness." The United States makes this request
22 specifically pertaining to, but not limited to, testimony
23 regarding how the Defendant conducted himself during
24 deployments to Iraq, his leadership skills in combat, his
25 teaching skills, his generosity, his willingness to stand up
26 for other people, his level of physical fitness, his military
27 skills, his Martial Arts abilities, and/or testimony regarding
28 his role as a mentor for junior Marines.

1 The character traits described above are not relevant to
2 the charge of possession of an unregistered machinegun and
3 should be excluded. See United States v. Washington, 106 F.3d
4 983, 999 (D.C. Cir. 1997) (evidence of prior commendations
5 received by the defendant (a police officer) not admissible to
6 show character for "dedication, aggressiveness and
7 assertiveness" in police work where defendant was charged with
8 drug and weapons offenses); United States v. Nazzaro, 889 F.2d
9 1158, 1168 (1st Cir. 1989) (excluding evidence of police
10 officer's prior commendations because "the traits which they
11 purport to show-bravery, attention to duty, perhaps community
12 spirit-were hardly 'pertinent' to the crimes [of perjury and
13 conspiracy to commit mail fraud] of which [the defendant]
14 stood accused").

15 Thus, the United States hereby moves in limine to
16 prohibit Defendant from introducing testimony from any
17 character witness about the Defendant's good military
18 character and/or specific acts of prior good conduct.

19 DATED: May 27, 2008.

20
21 Respectfully submitted,

22 KAREN P. HEWITT
23 United States Attorney

24 /s/ **Nicole Acton Jones**
25 NICOLE ACTON JONES
26 Assistant U.S. Attorney

26 TARA K. MCGRATH
27 Assistant U.S. Attorney
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No07CR3239-JM
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)
)
Plaintiff,)
)
v.)
) CERTIFICATE OF SERVICE
LEONARDO SAN JUAN, JR.,)
)
Defendant.)
_____)

IT IS HEREBY CERTIFIED THAT:

I, NICOLE ACTON JONES, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **GOVERNMENT'S SUPPLEMENTAL MOTION IN LIMINE** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Joseph H. Low IV

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 28, 2008.

/s/ **Nicole Acton Jones**
NICOLE ACTON JONES
Assistant U.S. Attorney